

NECA NATIONAL EXCHANGE
CARRIER ASSOCIATION^{INC.}

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Attorney

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May 24, 1991

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

RM 7736

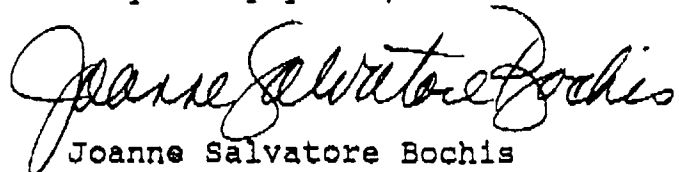
Re: National Exchange Carrier
Association, Inc.'s Request for
Rule Change Concerning the
Composition of its Board of
Directors

Dear Ms. Searcy:

Enclosed herewith for filing with the Commission are the original and five copies of the National Exchange Carrier Association, Inc.'s Petition for Rulemaking in the above-captioned matter.

Please acknowledge receipt hereof by affixing a notation on the duplicate copy of this letter furnished herewith for such purposes and remitting same to bearer.

Very truly yours,


Joanne Salvatore Bochis

JSB/jlt

Enclosures

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MAY 24 1991

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

National Exchange Carrier
Association, Inc. Request for
Rule Change Concerning the
Composition of its
Board of Directors

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Rm 7736

PETITION FOR RULEMAKING

The National Exchange Carrier Association, Inc. (NECA) requests that the Commission initiate a rulemaking proceeding to revise Section 69.602 of its rules (47 C.F.R. § 69.602) which governs the composition of NECA's Board of Directors.¹ Specifically, NECA seeks a rule change, effective January 1, 1992, to expand its Board to seventeen members to include two outside directors who are not from the telephone industry.²

I. BACKGROUND

The current NECA Board of Directors is comprised of 15 members. These directors represent the three subsets of association membership.³ Three of the directors represent Subset

¹ Because of the timing of NECA's annual Board elections, NECA is simultaneously filing a related Petition for Waiver of the Commission's rules in order to implement this change to coincide with NECA's 1992 Board elections.

² Throughout this Petition, the two additional directors will be called outside directors even though this term traditionally refers to directors who are not internal managers of the company.

³ Section 69.602(a), 47 C.F.R. § 69.602(a) describes each subset as follows: (1) The first subset shall consist of all the
(continued...)

1; three directors represent Subset 2 and nine directors represent Subset 3 member telephone companies. The current directors are affiliated with telephone companies and have been elected by NECA members representing their particular subset.⁴

On November 9, 1990, the Commission sent a letter to Lawrence C. Ware, Chairman of the NECA Board of Directors, regarding an audit of NECA which focused on the revenue distribution process and certain adjustments to the Common Line Pool during the last quarter

³(...continued)

Bell System Operating Companies other than Cincinnati Bell Inc. and Southern New England Telephone Company; (2) The second subset shall consist of all other telephone companies with annual operating revenues in excess of forty million dollars; and (3) The third subset shall consist of all other telephone companies.

⁴ Since its inception, the NECA Board has been composed of telephone company employees. The total number of directors and the specific number of directors representing each subset has varied in accordance with the initial FCC requirements and in order to balance the interests of the NECA subset companies. See, MTS and WATS Market Structure, CC Docket No. 78-72, Phase 1, Supplemental Order, 94 FCC 2d 852 (1983); MTS and WATS Market Structure, CC Docket No. 78-72, Phase I: NECA Board of Directors, Order Denying Requests for Waiver and Granting Waiver, Mimeo No. 6949 (released Sept. 12, 1985); MTS and WATS Market Structure, CC Docket No. 78-72, Phase 1: NECA Board of Directors, Order Granting Waiver, Mimeo No. 5377 (released June 27, 1986); MTS and WATS Market Structure, CC Docket No. 78-72, Phase I: NECA Board of Directors, Order Granting Waiver, 2 FCC Rcd 4702 (1987); MTS and WATS Market Structure, CC Docket No. 78-72, Phase 1: NECA Board of Directors, Order Granting Waiver, 3 FCC Rcd 4603 (1988); MTS and WATS Structure, CC Docket No. 78-72, Phase I: NECA Board of Directors, Order, 3 FCC Rcd 5118 (1988); and MTS and WATS Market Structure, CC Docket No. 78-72, Phase I: NECA Board of Directors, Order, 4 FCC Rcd 4449 (1989). "Because of the varying interests of NECA's members in NECA's activities, the Common Carrier Bureau has granted waivers of Sections 69.602(d)-(e) of our rules to permit a NECA Board structure that was more representative of the member companies." (note omitted) Id.

of 1988.⁵ The Commission stated that the Board of Directors "has the responsibility and duty to ensure that the final settlement figures reached by NECA reflect the actual financial results of providing access service."⁶ The Commission believed that it was necessary for NECA to take a number of actions to promote confidence in its processes.

One of the actions that the Commission stated it was considering is whether the NECA Board of Directors should be expanded "to include two or more members from outside the local exchange carrier industry."⁷ In order to address any Commission concerns about the NECA Board of Directors and for the reasons discussed below, NECA is proposing that two outside independent directors be elected to the NECA Board.

II. DISCUSSION

It is of paramount importance to NECA and its Board of Directors that the public have confidence in its processes and overall management. As Chairman Ware stated in his letter dated December 21, 1990 to the Commission, the NECA Board has worked diligently to oversee the pooling process according to the

⁵ Letter from Donna R. Searcy, FCC Secretary, to Lawrence C. Ware, Chairman of the Board of Directors, National Exchange Carrier Association, Inc., FCC 90-387, released November 9, 1990. At the same time, the Commission issued Notices of Apparent Liability for Forfeiture and Orders to Show Cause against four Subset 1 telephone companies for violations of the Commission's accounting rules.

⁶ Id. at 1.

⁷ Id. at 2.

Commission's mandate and the reasonable needs of the exchange carriers, has adhered to the highest standards of conduct in every area of NECA operations and will continue to do everything necessary to ensure the confidence of the Commission and the industry in all of NECA's responsibilities.⁸

NECA believes that its Board has operated in all of its actions with integrity and would like to provide assurances that the NECA Board will faithfully continue to carry out its legal obligations and fiduciary duties in the future. NECA is, therefore, responding to the Commission's Letter by initiating a Petition for Rulemaking to add two outside directors to the NECA Board effective January 1992.⁹

NECA proposes that an outside director must not be a current or former officer or employee of NECA or a member company, or be related to any such person. An outside director also must not have a business relationship or other interest that could interfere with the exercise of independent judgment as director.

Screening of outside director candidates would take place during the nomination process which would be conducted by the NECA Board Election Committee. The Election Committee would solicit qualified candidates from the business, professional financial, and academic communities including ex-governmental officials. Nominees

⁸ December 21, 1990 Letter from Lawrence C. Ware, Chairman of the NECA Board of Directors to Donna R. Searcy, FCC Secretary regarding FCC Nos. 90-383, 384, 385 and 386.

⁹ See Exhibit 1 for NECA's proposed rule changes to 47 C.F.R. § 69.602.

deemed qualified by the Board of Directors would be listed on NECA's annual Board ballot and two outside directors would be selected by the membership of NECA.

Publicly-held corporations, including telephone companies, have commonly included on their boards of directors, outside individuals who exercise independent judgment, provide disinterested oversight and vigilantly monitor corporation management to determine the corporation's best interests.¹⁰ Although NECA is a private not-for-profit company, it believes that skills and experience from outside the telephone industry would be valuable assets and would complement NECA's commitment to the highest standards of conduct.

III. CONCLUSION

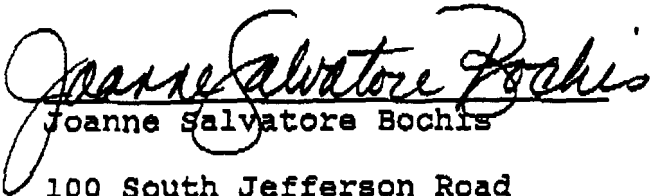
In response to the Commission's letter, NECA is petitioning the Commission to institute a rulemaking to add two outside directors to the NECA Board. These directors would be selected based on criteria that would ensure their independence from

¹⁰ The Corporate Director's Guidebook, 33 Bus. Law. 1595, No. 3, reprint of rev. ed. January 1978 (Guidebook). The Guidebook states that "While independent judgment is an essential of the director's responsibility and attention is an essential of his duty, the emphasis in this Guidebook on 'disinterested oversight' and 'monitoring' contemplates their exercise in a framework of collaborative support to operating management. . . ." Guidebook, at 27.

association membership and management. NECA believes that this step will benefit its membership and will ensure NECA's continuing commitment to integrity and diligent management.

Respectfully submitted,

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.


Joanne Salvatore Bochis

100 South Jefferson Road
Whippany, New Jersey 07981

Its Attorney

May 24, 1991

PROPOSED RULES CHANGE

Section 69.602

. . .

(b) There shall be seventeen directors of the association.

. . .

(e) Two directors shall be designated "outside directors" as described in (f) below and shall be elected by the full membership.

(f) An outside director of the association shall mean a director who is not:

(1) a current or former officer or employee of the association or member company or any relative of any such officer or employee;

(2) a person having a business relationship or other interest that could interfere with the exercise of independent judgment as a director.

The former Sections 69.602(e) and (f) shall be redesignated as Sections 69.602(g) and (h).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Petitions were served this 24th day of May 1991, by mailing copies thereof by United States Mail, first class postage prepaid, to the persons listed.

By: Susan Duren
Susan Duren

The following parties were served:

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Bureau Chief
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Commissioner
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*Alfred C. Sikes
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* - Hand Delivered